

## Message Text

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ORIGIN ARA-10

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FM SECSTATE WASHDC

TO AMEMBASSY PORT AU PRINCE IMMEDIATE

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E.O. 11652: N/A

TAGS: EINV, ETEL, PINT, HA

SUBJECT: DEPARTMENT DISCUSSIONS WITH LAWYER FOR TELE HAITI

REF: PORT AU PRINCE 257

1. DEPARTMENT OFFICERS MET ON FEB 3 WITH WHITNEY GERARD, LAWYER FOR US SHAREHOLDERS IN TELE HAITI, REGARDING POSITION OF INVESTORS AND POSSIBLE USG APPROACHES TO GOH IN RELATION TO ABROGATION OF EXCLUSIVE RIGHTS OF TELEVISION OPERATION IN HAITI. GERARD REVIEWED FACTS IN CASE. WHILE GERARD DOES NOT DISPUTE RIGHT OF GOH TO ABROGATE MONOPOLY, HE MAINTAINS THAT SUCH ACTION UNDERMINES PROFITABILITY OF INVESTMENT. CONSEQUENTLY, INVESTORS SEEK TO SELL OUT TO GOH OR OBTAIN COMPENSATION FOR LOSS OF EXCLUSIVE PRIVILEGES. DEPARTMENT OFFICERS REHEARSED THOROUGHLY POINTS OF AMBASSADOR'S JAN 31 MEETING WITH FOREIGN SECRETARY BRUTUS AND TOLD OF UP-COMING PROPOSED MEETING WITH JUSTICE SECRETARY JEANTY.

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2. GERARD EXPRESSED DESIRE THAT DEPARTMENT USE GOOD OFFICES TO ENCOURAGE GOH TO RECONSIDER STAND ON TELE HAITI, INDICATING THAT LATTER VERY FLEXIBLE RE MEANS OF REACHING ACCEPTABLE SOLUTION. DEPARTMENT OFFICERS MADE NO COMMITMENTS REGARDING POSSIBLE INFORMAL USG ASSISTANCE. HOWEVER, INVESTORS OBVIOUSLY BELIEVE MATTER WILL BE RESOLVED ONLY IF USG CAN CONVINCE GOH TO WORK OUT SOLUTION. RECOURSE

TO HAITIAN COURTS WAS TENTATIVELY RULBD OUT BY GERARD IN LIGHT GOH REFUSAL TO ARBITRATE; HE EXPRESSED BELIEF THAT SUCH ACTION WOULD BE FUTILE, YET TIME-CONSUMING EXERCISE.

3. GERARD INTRODUCED WHAT HE VIEWS AS A CRITICAL TIME FACTOR AT WORK IN PRESENT SITUATION. ACCORDING TO LAWYER, SITUATION HAS PUT US INVESTORS IN IMMEDIATE DIFFICULTIES WITH CREDITOR BANKS WHICH VIEW LOSS OF MONOPOLY AS THREAT TO SECURITY OF OUTSTANDING LOANS AND ARE NOW ANXIOUS TO COLLECT ON NOTES. WITHOUT SOME POSITIVE DEVELOPMENT, LAWYER DEPICTED SITUATION IN WHICH TELE HAITI OPERATION WOULD SUFFER FINANCIAL COLLAPSE, BE FORCED TO END PROGRAMMING, AND PERHAPS EVEN BE ACCUSED BY GOH OF FAILURE TO MEET OBLIGATIONS OF CONTRACT (IN FACT BROUGHT ON BY GOH) AND FIND ITSELF TAKEN OVER BY THE STATE. SUCH A SITUATION WOULD BE EVEN WORSE FOR USG TO DEAL WITH.

4. GERARD CONTENDED THAT ARBITRATION PROVISION WAS IN FACT APPLICABLE TO QUESTION OF ELIMINATION OF RIGHT TO EXCLUSIVITY PROVIDED IN TELE HAITI'S CONTRACT, AND SAID THAT HE WAS SUPPORTED IN THIS RESPECT BY LOCAL ATTORNEY GEORGE BEAUFILS. ON BASIS OUR SOMEWHAT LIMITED INFORMATION DEPARTMENT TENDS TO AGREE AND QUESTION GUILLANE'S CONCLUSION REPORTED PORT AU PRINCE 240. ISSUE IN OUR VIEW, IS NOT WHETHER EXCLUSIVE PRIVILEGES CONSTITUTE "PROPERTY RIGHTS" OR WHETHER GOH MAY WITHDRAW THOSE RIGHTS. GOH CLEARLY HAS SOVEREIGN RIGHT TO ALTER MONOPOLY. IT IS WHETHER SUCH WITHDRAWAL, WHICH WE ASSUME IS WITHIN GOH AUTHORITY, CONSTITUTES BREACH OF CONTRACT THAT MUST BE COMPENSATED AND WHETHER ARBITRATION PROVISION APPLICABLE TO "INTERPRETATION" OR "EXECUTION" OF CONTRACT PROVISION COMES INTO PLAY. GOH APPEARS TO HAVE TAKEN ACTION AFFECTING TELE HAITI'S LIMITED OFFICIAL USE

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CONTRACT RIGHTS UNDER SPECIFIC CONTRACT PROVISION AND ARBITRATION CLAUSE THUS APPEARS APPLICABLE. WE WOULD WELCOME FURTHER THOUGHTS ON THIS ISSUE. THIS DOES NOT, OF COURSE, PRECLUDE OTHER MUTUALLY ACCEPTABLE MEANS OF RESOLVING DISPUTE.

5. GERARD EXPRESSED CLEAR PREFERENCE OF US TELE HAITI INVESTORS FOR GOH OUTRIGHT PURCHASE OF FIRM AT \$700 THOU-

SAND LEVEL WHICH GERARD SAYS PREVIOUSLY AGREED TO IN PRINCIPLE BY HAITIANS (FIGURE REPRESENTS, ACCORDING TO GERARD NET LOSS ON ACTUAL INVESTMENT). THOUGH WARY OF CONTINUING OPERATIONS AND POSSIBLE FUTURE DIFFICULTIES, INVESTORS WOULD ALSO ACCEPT INDEMNIFICATION FOR LOSS OF EXCLUSIVE RIGHTS, IF GOH WILLING TO PROVIDE ASSURANCES THAT TELE HAITI WOULD NOT BE DISCRIMINATED AGAINST IN FUTURE. GERARD EXPRESSED WILLINGNESS OF CLIENTS TO ACCEPT ANY REASONABLE

FORUM FOR RESOLUTION OF AMOUNT OF INDEMNITY AND ANY REASONABLE MEANS OF DIRECT OR INDIRECT PAYMENT ( SUCHAS "SUBSTANTIALLY INCREASED SUBSIDY;.)

6. COMMENT: DEPARTMENT VIEWS TURN OF EVENTS IN TELE HAITI AFFAIR -ITH SOME CONCERN. UNILATERAL ACTION BY GOH AGAINST TELE HAITI INVESTMENT GROUP PUTS DEPARTMENT IN DIFFICULT POSITION WITH RESPECT TO NUMEROUS MATTERS TIED TO GOH ACTIONS TOWARD INVESTMENTS. GOH MUST BE AWARE OF DIFFICULTIES CAUSED TO OUR ASSISTANCE PROGRAM TO HAITI BY OTHER DISPUTES. ADDING A FRESH DISPUTE THIS YEAR WILL NOT BE HELPFUL IN THIS REGARD. DEPARTMENT HAS ALREADY RECEIVED EXPRESSIONS OF INTEREST AND CONCERN FROM CONGRESSMEN CONABLE (R) AND HORTON (BOTH OF NEW YORK.

7. TELE HAITI DISPUTE COMES AT TIME OF INTENSIVE WASHINGTON REVIEW OF EXPROPRIATION CLAIMS PRIOR TO IMPLEMENTATION OF GSP PORTIONS OF NEW TRADE ACT, WHICH BARS EXTENSION OF GSP TO COUNTRIES WITH UNRESOLVED EXPROPRIATION PROBLEMS UNLESS CERTAIN CONDITIONS ARE FULFILLED. PROBLEM IS, HOWEVER, ALSO MORE GENERAL ONE INVOLVING GOH REPUTATION IN PRIVATE INVESTMENT. WE BELIEVE BOTH OUR OWN AND GOH INTERESTS COULD BE WELL SERVED BY PROMPT RESOLUTION OF THIS MATTER, AND HOPE YOU CAN CONVEY THESE FEELINGS TO LIMITED OFFICIAL USE

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GOH. KISSINGER

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